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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,183

09/30/2004

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Q83823

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23373 7590 07/28/2009  
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EXAMINER

MOWLA, GOLAM

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

07/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/510,183	<b>Applicant(s)</b> RANSQUIN ET AL.	
	<b>Examiner</b> GOLAM MOWLA	<b>Art Unit</b> 1795	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-7.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Alexa D. Neckel/  
 Supervisory Patent Examiner, Art Unit 1795

/G. M./  
 Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that "the examiner in the present Office action proposes that the filter 172 of Horne would replace the coating on the reflecting concentrator 106 of the present application" (Remarks, page 1).

The Examiner respectfully disagrees. Firstly, the filter 172 of Horne does not replace the coating on the reflecting concentrator 106, rather the filter 172 is placed on the reflecting concentrator 106 in order to filter out the unwanted radiation as taught by Horne.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant also argues that "the filter arrangement of Horne is designed for light that passes through the concentrator to the PV (see Fig.38), and does not contemplate that the light passes through the filter, reflects from the reflecting concentrator and then passes back through the filter toward the PV cell" (Remarks, paragraph bridging pages 1 and 2).

The Examiner respectfully disagrees. Since AAPA in view of Horne discloses the concentrator (106) is reflecting, therefore, the light that passes through the filter, reflects from the reflecting concentrator (106) (due to reflecting properties) and then passes back through the filter (as the filter 172 is placed on the concentrator 106) toward the PV cell.

Applicant also argues that "there is no suggestion in the admitted prior art of the present application that a filter layer should be placed in a position where it filters radiation passing through it in both directions, once when passing to the concentrator and again when coming from the concentrator" (remarks, page 2). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition, Examiner acknowledges that AAPA is silent as to a filter and in order to cure this deficiency the secondary reference (Horne et al.) was brought in. Horne discloses the use of a filter array (172) (abstract, fig. 36, col. 11, lines 17-23) on a surface of the concentrator (concentrator 170, fig. 36) that receives radiation (see fig. 38) allows to filter out the unwanted radiation and transmits the wanted radiation to the surface of the concentrator (170) to produce desired spectral bandwidth profile such that the energy conversion efficiency of the photovoltaic cell (174) can be optimized (col. 1, line 48 through col. 2, line 6). Hence, one skilled in the art would have incorporated the filter array (172) of Horne on the concentrator (106) in order to produce desired spectral bandwidth profile such that the energy conversion efficiency of the photovoltaic cell can be optimized.

In response to Applicant's argument "the filter operates only on radiation passing through it in one direction" (remarks, page 2), Examiner notes that since AAPA in view of Horne discloses the concentrator (106) is reflecting, therefore, the light that passes through the filter, reflects from the reflecting concentrator (106) (due to reflecting properties) and then passes back through the filter (as the filter 172 is placed on the concentrator 106) toward the PV cell. Therefore, the filter array filters the radiation in both directions.

With respect to claim 2, Applicant argues that "the filter layer of Horne reflects unwanted radiation, but does not absorb as it is required in claims 2 and 3" (remarks, page 2).

Examiner acknowledges the deficiency in Horne, i.e., the filter layer of Horne is not made from materials absorbing the unwanted portion of the radiation, and in order to cure this deficiency Chappell et al. (US 4200472) was brought in (see paragraph 7 of office action dated 03/13/2009).

With respect to claim 5, Applicant argues that "contrary to the examiner's assertion that there is no disclosure as to the impact of the claimed thickness changes, note Fig. 2 which illustrates how the inclination of the surface 116 relative to the surface of 106 will impact the reflection angles and thereby impact what is or is not reflected or the angles of refraction of whatever is not reflected, both the first time through the filter and the second time through the filter" (Remarks, page 2).

The Examiner respectfully disagrees. Fig. 2 shows only one radiation flux that is reflected at an angle. Fig. 2 fails to disclose the variation in the reflection angle (i.e., multiple luminous fluxes being reflected at different angles). Hence, it would have been obvious to one of ordinary skill in the art at the time of the invention to have determined any desired thickness pattern of the filter layer because it is a matter of choice which a person of ordinary skill in the art would have found obvious. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See also MPEP § 2144.04 IVB..